

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFERSON A. McGEE,

Plaintiff,

v.

AIRPORT LITTLE LEAGUE
BASEBALL, INC., et al,

Defendants.

No. 2:21-cv-1654 DAD DB PS

ORDER

Plaintiff Jefferson A. McGee is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On October 19, 2021, the Clerk entered default as to defendant Enrique Hernandez. (ECF No. 7.) On July 25, 2022, defendant Enrique Hernandez filed a motion to set aside the Clerk's entry of default and noticed the motion for hearing before the undersigned on September 9, 2022. (ECF No. 35.)

However, on August 19, 2022, the undersigned dismissed plaintiff's amended complaint with leave to file a second amended. (ECF No. 38.) The second amended complaint will supersede the amended complaint "the latter being treated thereafter as non-existent." Lacey v. Maricopa Cnty., 693 F.3d 896, 925 (9th Cir. 2012). Once plaintiff files the second amended complaint, defendant Hernandez will have an opportunity to file a response to the second


1 amended complaint. Accordingly, defendant's motion to set aside default will be denied without
2 prejudice to renewal as having been rendered moot. See Wahoo Intern., Inc. v. Phix Doctor, Inc.,
3 Nos. 09-15703, 09-150806, 2015 WL 410347, at *2 (S.D. Cal. Aug. 29, 2015) ("the amended
4 complaint rendered the default moot").

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Defendant's July 25, 2022 motion to set aside default (ECF No. 35) is denied without
7 prejudice to renewal as having been rendered moot; and

8 2. The September 9, 2022 hearing of defendant's motion is vacated.

9 Dated: September 2, 2022

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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